

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

509281

FILE: B-184265

DATE: July 18, 1975

MATTER OF: R. G. Robbins & Company, Inc.

9 7359

DIGEST:

Even assuming protester timely filed protest of allegedly defective IFB specifications for 2-inch by 12-inch scaffold plank with agency prior to bid opening, subsequent protest to GAO is untimely under section 20.2(a) of Bid Protest Procedures and not for consideration, since not filed within 10 working days after protester received agency letter denying protest. Protester's pursuit of matter with independent lumber rule writing bureau prior to filing protest is not valid basis for extending 10-day limitation.

By mailgram dated June 20, 1975 (received in our Office on June 23, 1975), R. G. Robbins & Company, Inc. (Robbins), protested the allegedly defective specifications in invitation for bids (IFB) DSA720-75-B-0684, issued by the Defense Construction Supply Center, Defense Supply Agency (DSA), Columbus, Ohio, for 2-inch by 12-inch scaffold planks.

For over a year, Robbins and DSA have had a dispute as to the permissible variations in sizes for scaffold planks supplied under the protested specification. In this regard, Robbins solicited the technical opinion of the West Coast Inspection Bureau (Bureau) as to the correct interpretation of the specification. Robbins states that the Bureau is one of the three major independent rule writing agencies for lumber, and most scaffold planks are produced for the Government under the Bureau's rules. The Bureau gave its interpretation of the specification to DSA by letter dated January 15, 1975. Subsequently, DSA issued an interpretative letter to Robbins dated February 21, 1975, regarding the permissible size variances for 2-inch by 12-inch scaffold planks. Robbins takes exception with DSA's interpretation claiming that it is inconsistent with the Bureau's interpretation. Robbins contends that in view of DSA's letter it recognized that DSA and the Bureau might have reached some understanding, so it held off on filing a protest pending a clarification by the Bureau.

By telegram dated May 8, 1975, and letter dated May 9, 1975, Robbins protested the specification in the present IFB to DSA. However, although it is possible that DSA had received the protest prior to bid opening, the contracting officer had not received any notice of Robbins' protest when bids were opened on May 9, 1975. By letter dated May 30, 1975 (received by Robbins on June 3, 1975), DSA denied Robbins' protest. On that same date, award was made. All unsuccessful bidders were notified of the award on June 9, 1975.

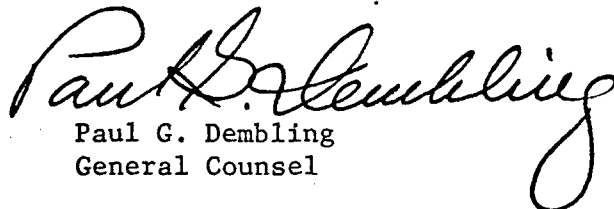
Robbins solicited an oral opinion from a Bureau representative on June 11, 1975, to the effect that the Bureau's position on the specification had not changed, and the Bureau had reached no understanding with DSA. The Bureau reiterated this position by letter dated June 18, 1975. Only then did Robbins protest to our Office.

Section 20.2(a) of our Bid Protest Procedures states in pertinent part:

"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered * * *"

Robbins did not protest to our Office within 10 working days after it received DSA's May 30 letter denying its protest. Therefore, even assuming that Robbins' protest to DSA was timely filed prior to bid opening, its protest to our Office must be considered untimely. We do not regard Robbins first pursuing the matter with the Bureau prior to filing a protest as being a valid basis for extending the 10-day time limitation required by our procedures.

Therefore, we will not consider this protest on the merits.


Paul G. Dembling
General Counsel